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Attorneys for Debtors

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

Case No. BK-S-06-10725 LBR

Case No. BK-S-06-10726 LBR

In re:

USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

Case No. BK-S-06-10727 LBR

Case No. BK-S-06-10728 LBR

Case No. BK-S-06-10729 LBR

In re:

USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,

Debtor.

Chapter 11

Jointly Administered Under

In re:

USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

Case No. BK-S-06-10725 LBR

Date: October 15, 2007

In re:

USA SECURITIES, LLC,

Debtor.

Time: 9:30 a.m.

Affects:

☐ All Debtors

☐ USA Commercial Mortgage Company

☐ USA Securities, LLC

☒ USA Capital Realty Advisors, LLC

☐ USA Capital Diversified Trust Deed Fund, LLC

☐ USA Capital First Trust Deed Fund, LLC

**DECLARATION OF THOMAS J. ALLISON  
 IN SUPPORT OF USA CAPITAL REALTY  
 ADVISORS, LLC'S OBJECTIONS TO THE  
 AMENDED PROOFS OF CLAIM 37-2, 38-2,  
 AND 39-2 FILED BY THE PENSION BENEFIT  
 GUARANTY CORPORATION**

**(AFFECTS USA CAPITAL REALTY  
 ADVISORS, LLC)**

I, Thomas J. Allison, hereby declare, verify and state as follows:

1. I am the President and Chief Restructuring Officer of USA Commercial Mortgage Company ("USACM") and am or was prior to March 12, 2007 (the "Effective Date"), the Manager and Chief Restructuring Officer of each of the four other debtors in these jointly administered chapter 11 cases; namely, USA Securities, LLC ("USA Securities"), USA Capital Realty Advisors, LLC ("USA Realty"), USA Capital Diversified Trust Deed Fund, LLC ("DTDF"), and USA Capital First Trust Deed Fund, LLC ("FTDF") (collectively the "Debtors").

2. The Debtors filed for relief under Chapter 11 of the Bankruptcy Code on April 13, 2006 (the "Petition Date").

3. On the Petition Date, Mesirow Interim Financial Management was employed to manage the Debtors and I was appointed the Chief Restructuring Officer of the Debtors.

4. On November 15, 2006, the Debtors' filed their joint plan of reorganization (the "Plan") and disclosure statement (the "Disclosure Statement").

5. On January 8, 2007, the Court entered an order confirming the Debtors' Plan.

6. Through my service as the Chief Restructuring Officer of the Debtors, I became familiar with the books and records of the Debtors, I became familiar with some of the records of USA Investment Partners, LLC ("Investment Partners"), which were kept by the USACM's personnel until the Petition Date, and, prior to the confirmation of the Plan, I had conversations with Joseph D. Milanowski, who was a principal and the primary officer or manager of the Debtors prior to the bankruptcy filings. Based upon this information, I state the following facts as being true to the best of my knowledge.

7. I make this Declaration in support of USA Realty's Objections to Amended Proofs of Claim No. 37-2, 38-2, and 39-2 filed by the Pension Benefit Guaranty Corporation ("PBGC").

8. The sole shareholders of USACM prior to the Petition Date were Thomas A. Hantges, Joseph D. Milanowski, Paul S. Hamilton (either in their own names or through trusts they control), and Red Granite, LLC.

9. Joseph D. Milanowski and Paul S. Hamilton combined owned approximately 43%

(but in any event, less than 50%) of the stock of USACM prior to the Petition Date.

10. USA Realty is a limited liability company.

11. The Plan and Disclosure Statement filed in this case were prepared using, in part, certain documents created by prior management. Specifically, one of the documents used was the Form 10-K dated April 15, 2005, filed by FTDF with the United States Securities and Exchange Commission (the "FTDF Form 10-K"). This document contains an entity organization chart showing that, as of the end of 2004, USAIP was the sole member of USA Realty. Based on this and other such documents, the Plan and Disclosure Statement also show USAIP as the sole member of USA Realty as of the Petition Date.

12. Since the filing of the Plan and Disclosure Statement, I have reviewed other documents regarding the ownership of USA Realty that were prepared and executed after the filing of the FTDF Form 10-K. These documents, which were recently brought to my attention, now lead me to conclude that USAIP did not own any interest in USA Realty as of the Petition Date. Included among the documents that I have recently reviewed are the Agreement for Purchase of Membership Interest dated June 8, 2005 (the "Sale Agreement"), attached hereto as Exhibit A and incorporated herein by reference, and the Annual List of Managers or Members dated January 9, 2006, and filed with the Nevada Secretary of State (the "List of Members"), attached hereto as Exhibit B and incorporated herein by reference.

13. The Sale Agreement shows that on June 8, 2005, after the date that the FTDF Form 10-K was filed with the SEC but before the Petition Date, USAIP sold all of its interests in USA Realty to Joseph D. Milanowski (80%) and Paul S. Hamilton (20%).

14. This change in ownership is also reflected in the List of Members, which lists Joseph D. Milanowski and Paul S. Hamilton as the only members of USA Realty as of January 9, 2006.

15. Upon information and belief, Paul S. Hamilton later sold his interests in USA Realty to Joseph D. Milanowski prior to the Petition Date making Mr. Milanowski the sole member of USA Realty as of the Petition Date.

I declare, under penalty of perjury, that, to the best of my knowledge, information and belief, that the foregoing is true and correct.

*[Handwritten signature]*

Thomas J. Allison

## **Exhibit A**

## **AGREEMENT FOR PURCHASE OF MEMBERSHIP INTEREST**

USA Capital Realty Advisors, LLC, a Nevada limited liability company ("Realty Advisors"), USA Investment Partners, LLC, a Nevada limited liability company ("USA"), Joseph D. Milanowski and Paul Hamilton (collectively, "Buyers") hereby agree as follows:

### **RECITALS**

- A. USA is the sole and managing member of Realty Advisors.
- B. USA wishes to sell to Buyers, who wish to purchase, USA's membership interest in Realty Advisors (the "Membership Interest").

NOW, THEREFOR, for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree that Buyers may purchase the Membership Interest upon the terms and conditions set out below.

### **AGREEMENTS**

1. Buyers shall pay \$100 for the Membership Interest, of which Joseph D. Milanowski shall pay \$80 for a membership interest of 80% of Realty Advisors, and Paul Hamilton shall pay \$20 for a Membership Interest of 20% of Realty Advisors.
2. Buyers shall assume all of USA's rights, privileges, duties and responsibilities as a member of Realty Advisors, and shall be a full voting member.
3. USA hereby represents for the benefit of Realty Advisors, Paul Hamilton, and Joseph D. Milanowski that it has not previously pledged, hypothecated, granted a security interest in, sold, or transferred in any manner all or any part of the Membership Interest, that it has good and clear title to said Membership Interest, and that the sale of it will not violate any contract, agreement, order, decree, or judgment of any court of competent jurisdiction or the ruling of any arbitrator or governmental agency with jurisdiction over USA.
4. Buyers represent that they are acquiring the Membership Interests solely for investment purposes, and with no intent to resell it now or at any time in the future. Buyers acknowledge that the Membership Interests are not registered securities, cannot be sold or transferred without the written unanimous consent of all of the members of Realty Advisors, and without there being a valid exemption from registration under all applicable securities laws. Buyers also understand that no market presently exists for the Membership Interests in Realty Advisors, and that none may ever exist.
5. The sale of the Membership Interest shall be effective on June 8, 2005.
6. The laws of the State of Nevada shall govern the construction and enforcement of this Agreement. Should suit be brought to construe or enforce this Agreement, venue shall lie in Clark

County, Nevada, and the prevailing party or parties shall be entitled to recover reasonable attorneys' fees. This Agreement shall be binding on the parties' heirs, successors and assigns, and anyone claiming by or through them.

IN AGREEMENT HERewith THE PARTIES HAVE SET THEIR HANDS AS OF THIS 8<sup>th</sup> DAY OF JUNE, 2005.

**USA CAPITAL REALTY ADVISORS, LLC**

By: USA Investment Partners, LLC, Managing Member

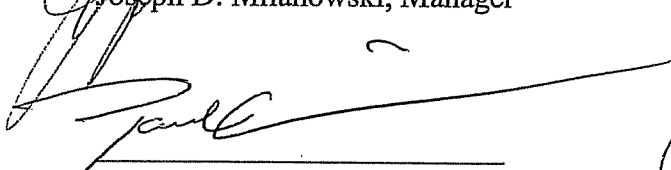
By: 

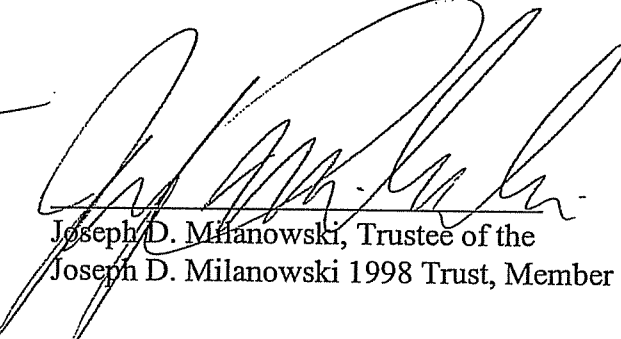
Joseph D. Milanowski, Manager

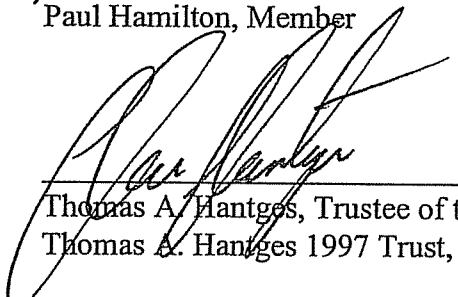
**USA INVESTMENT PARTNERS, LLC**

By: 

Joseph D. Milanowski, Manager

  
Paul Hamilton, Member

  
Joseph D. Milanowski, Trustee of the  
Joseph D. Milanowski 1998 Trust, Member

  
Thomas A. Hantges, Trustee of the  
Thomas A. Hantges 1997 Trust, Member

## **Exhibit B**



**ANNUAL LIST OF MANAGERS OR MEMBERS OF:**

USA CAPITAL REALTY ADVISORS, LLC  
FOR THE PERIOD JAN 2006 TO 2007. DUE BY JAN 31, 2006.

The Limited Liability Company's duly appointed resident agent in the State of Nevada upon whom process can be served is:

THOMAS RONDEAU  
4484 SOUTH PECOS ROAD  
LAS VEGAS NV 89121

Entity #  
**LLC600-2001**  
Document Number:  
**20060015568-03**

Date Filed:  
1/11/2006 6:03:47 AM  
In the office of

*Dean Heller*

Dean Heller  
Secretary of State

☐ IF THE ABOVE INFORMATION IS INCORRECT, PLEASE CHECK THIS BOX AND A CHANGE OF RESIDENT AGENT/ADDRESS FORM WILL BE SENT.

THE ABOVE SPACE IS FOR OFFICE USE ONLY

**PLEASE READ INSTRUCTIONS BEFORE COMPLETING AND RETURNING THIS FORM.**

1. Include the names and addresses, either residence or business, for all managers, or if none, its members. Last year's information has been preprinted. If you need to make changes, cross out the incorrect information and insert the new information above it. A manager, or if none, a member of the company must sign the form. **FORM WILL BE RETURNED IF UNSIGNED.**
2. If there are additional managers or members, attach a list of them to this form.
3. Return the completed form with the \$125.00 filing fee. A \$75.00 penalty must be added for failure to file this form by the deadline. An annual list received more than 90 days before its due date shall be deemed an amended list for the previous year.
4. Make your check payable to the Secretary of State. To receive a certified copy, enclose an additional \$30.00 and appropriate instructions.
5. Return the completed form to: Secretary of State, 202 N. Carson St., Carson City, NV 89701-4201. (775) 684-5708.
6. Form must be in the possession of the Secretary of State on or before the last day of the month in which it is due. (Postmark date is not accepted as receipt date.) Forms received after due date will be returned for additional fees and penalties.

FILING FEE: \$125.00 PENALTY: \$75.00

NAME	TITLE(S)	(Document will be rejected if Title not indicated)		
<del>USA INVESTMENT PARTNERS, LLC</del>	<input type="checkbox"/> MANAGER <input type="checkbox"/> MEMBER			
P.O. BOX <del>4484 S PECOS RD</del>	ADDRESS <del>LAS VEGAS</del>	CITY <del>NV</del>	ST. <del>89121</del>	ZIP <del>89121</del>
<del>USA INVESTMENT PARTNERS, LLC</del>	<input type="checkbox"/> MANAGER <input type="checkbox"/> MEMBER			
P.O. BOX <del>4484 S PECOS RD</del>	ADDRESS <del>LAS VEGAS</del>	CITY <del>NV</del>	ST. <del>89121</del>	ZIP <del>89121</del>
Joseph D. Milanowski	TITLE(S)	(Document will be rejected if Title not indicated)		
4484 S PECOS RD	<input type="checkbox"/> MANAGER <input checked="" type="checkbox"/> MEMBER			
P.O. BOX	ADDRESS	CITY	ST.	ZIP
		LAS VEGAS	NV	89121
Paul Hamilton	TITLE(S)	(Document will be rejected if Title not indicated)		
4484 S PECOS RD	<input type="checkbox"/> MANAGER <input checked="" type="checkbox"/> MEMBER			
P.O. BOX	ADDRESS	CITY	ST.	ZIP
		LAS VEGAS	NV	89121
	TITLE(S)	(Document will be rejected if Title not indicated)		
	<input type="checkbox"/> MANAGER <input type="checkbox"/> MEMBER			
P.O. BOX	ADDRESS	CITY	ST.	ZIP

I declare, to the best of my knowledge under penalty of perjury, that the above mentioned entity has complied with the provisions of NRS 360.780 and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State.

*[Signature]*  
X Signature of Manager or Managing Member

Date

1-9-06

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(Rev. 01/05)